



Washington, D.C. 20505

OGC 82-00375

82-2120/1

18 JAN 1982

Honorable William P. Clark  
Assistant to the President  
for National Security Affairs  
345 Old Executive Building  
17th and Pennsylvania Avenue  
Washington, DC 20506

Re: Executive Order on Classification

Dear Mr. Clark:

In response to Edwin Meese's 23 December 1981 letter, set forth below are the Agency's comments on the draft revision of Executive Order 12065. Each of these comments is keyed to the section and page numbers of the draft order attached to the 23 December 1981 letter.

With respect to these proposed changes, I think that it is particularly necessary to include a definition of "cryptology" in the Order which accurately reflects the current Intelligence Community understanding as to the respective responsibilities of the Director of Central Intelligence (DCI) and the Secretary of Defense. By the terms of this understanding, the DCI is responsible for signals intelligence (SIGINT) and SIGINT security policy and the Secretary of Defense is responsible for communications security (COMSEC) matters. "Cryptology," as presently defined in the Intelligence Community Glossary, includes both SIGINT and COMSEC. The definition of "cryptology" suggested herein would limit that term for purposes of this Order to "cryptography and communications security" and would thus accord with the current understanding of DCI and Secretary of Defense responsibilities in this area.

Overall, I think the draft revision is a significant improvement over the existing order on classification. I support wholeheartedly the greater emphasis that has been placed in this draft on the protection of national security information, and the elimination of many of the burdensome and unnecessary requirements of current Executive Order 12065.

Sincerely,

/s/ William J. Casey

William J. Casey  
Director of Central Intelligence

COMMENTS ON ISOO DRAFT REVISION  
OF EXECUTIVE ORDER 12065

A. Page 7, Section 1-302

*yes*  
Change to read "Information that is determined to concern one or more of the categories in Section 1-301 shall be classified when an original classification authority also determines that its unauthorized disclosure, either by itself or in the context of other information, reasonably could be expected to cause damage to the national security."

As presently drafted, the consideration of information in the context of other related information is limited to fitting that information into a classification category under Section 1-301 rather than satisfying the damage or harm standard of Section 1-302 itself. The importance of permitting agencies to consider this "aggregate" effect in classifying information is to enable agencies to realistically assess the potential damage of disclosure. As amended, this section now authorizes agencies to consider the disclosure of related information in making this damage determination.

B. Page 8, Section 1-303

*no*  
Change to read "Unauthorized disclosure of foreign government information, the identity of a confidential foreign source, or information relating to intelligence activities (including special activities), or intelligence sources or methods, is presumed to cause damage to the national security."

The addition of "intelligence activities (including special activities)" is consistent with similar constructions throughout the draft.

C. Page 9, Section 1-501

*yes*  
Move the parenthetical provision in 1-501(a) and 1-501(b) to the main paragraph of 1-501, where it appeared in a previous draft.

This marking exclusion must appear in the main paragraph in order to cover all markings. There are circumstances in which any type of U.S. marking would reveal a confidential relationship.

D. Page 16, Section 3-301

*yes*  
The last sentence of Section 3-301 should be separated and made into a new Section 3-303. Additionally, the last five words of this sentence should be deleted.

(NO)

This provision for establishing special Secretary of Defense and DCI review procedures should be separate to make clear that the procedures may apply to all agencies, not just the National Archives. In establishing these procedures, mandatory consultation with affected agencies should not be required (even though such consultation normally occurs).

E. Page 18, Section 3-402

*no*  
Restructure the first two sentences to read: "Information originated by a President, the White House Staff, by committees, commissions, or boards appointed by the President, or others specifically providing advice and counsel to a President or acting on behalf of a President is exempted from the provision of Section 3-401. The Archivist of the United States shall have authority to review and declassify such information in the possession and control of the Administrator of General Services pursuant to Sections 2107, 2107 note, or 2203 of Title 44 U.S.C."

This is consistent with the coverage of Archivist authority provided elsewhere in the draft, which authority includes only that information in GSA custody.

F. Page 19, Section 3-404

*yes*  
The fourth sentence of Section 3-404 should be separated and numbered Section 3-405. The present Section 3-405 should be renumbered 3-406.

As with Section 3-301 (comment D above), the provision covering special Secretary of Defense and DCI review procedures should be separated to indicate that these procedures have general effect. The addition of the new authority for Archivist review in Section 3-402 (comment E above) also requires that this provision be separated to make clear that it is not tied solely to the "mandatory review" provision of Section 3-404.

G. Page 22, Section 4-202

Delete entire section.

*no* This requirement is unclear, unnecessary, burdensome and has failed to work in present Executive Order 12065.

H. Page 28, Section 5-402

*no* Change the introductory clause of Section 5-402 to read "Appropriate sanctions may be applied to any person who..."

Under the present draft, the application of sanctions is limited to "officers or employees of the United States Government" who commit any of the enumerated acts. Appropriate sanctions should also be authorized against non-employees who are provided access to classified information and violate the terms of the Order. This would explicitly authorize agencies to take any action "in accordance with applicable law and agency regulation" as provided in Section 5-403, including the termination of present and denial or future access to such classified information by non-employees.

I. Page 28, Section 5-403

*yes* Add the following language: "Sanctions may include reprimand, suspension without pay, removal, termination of classification authority, loss or denial of access to classified information, or other sanction..."

The Order should explicitly state that a loss of current access to classified information, or a denial of requested access at some future date are appropriate sanctions for violations of the Order. This is particularly true in the case of contractor personnel and other individuals who are not "employees" and thus not subject to many of the other authorized sanctions.

J. Page 29, Section 5-404

Change the last sentence to read "Either shall ensure that the Director of the Information Security Oversight Office is informed periodically of violations under Section 5-402(a) or (b)."

no  
Notifying D/ISOO on each occasion when there is an improper disclosure of classified information could adversely impact the Agency's polygraph program. Periodic notification of such violations will permit ISOO to fully perform its oversight function in this area.

K. Page 31, add Section 6-108

no  
6-108. "Cryptology," for the purposes of this Order, means cryptography and communications security.

This definition reflects the current Intelligence Community understanding that the Director of Central Intelligence is responsible for the portion of intelligence sources and methods known as signals intelligence (SIGINT) and the Secretary of Defense is responsible for communications security (COMSEC) matters. Without this definition, Section 4-201 of the ISOO draft is in direct contravention to the statutory authority of the DCI. Furthermore, NSCID 6 specifically makes the DCI responsible for SIGINT security policy. According to the official, current, Intelligence Community Glossary of Intelligence terms, "cryptology" includes both SIGINT and COMSEC. As an alternative to the addition of a definition for "cryptology," the word "cryptography" or "cryptographic" might be substituted for "cryptology" or "cryptologic" throughout the ISOO draft.

- L. In addition to the above comments, we support the ISOO wording changes in Sections 1-101(a), 1-103, 1-204(e), 1-205, 1-303, 1-501, 2-102(b), 3-401(b), 3-404, 5-202(d), 5-202(g), 5-301(b), 5-402(a), and 6-106. Further, we do not object to the changes in Sections 1-301(j), 1-401, 1-402, 1-501(c), 3-203, 3-401(a), 3-403, 3-405(b), 4-101, 5-102, 5-301(c), and 6-107. Also, there are two typographical errors in the last sentence of Section 3-301. There is an extra comma preceding the parenthesis in this sentence, and "sources and methods" should read "sources or methods." Additionally, the "could reasonably" in Section 6-106 should read "reasonably could."

97TH CONGRESS  
1ST SESSION

# S. 1273

To amend the Central Intelligence Agency Act of 1949, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MAY 21 (legislative day, APRIL 27), 1981

Mr. CHAFEE (for himself and Mr. GOLDWATER) introduced the following bill;  
which was read twice and referred to the Select Committee on Intelligence

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## A BILL

To amend the Central Intelligence Agency Act of 1949, and for  
other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the "Intelligence Reform Act  
4       of 1981".

5       SEC. 2. Section 6 of the Central Intelligence Agency  
6       Act of 1949 (50 U.S.C. 403g) is amended to read as follows:

7       "SEC. 6. In the interests of the security of the foreign  
8       intelligence activities of the United States and in order fur-  
9       ther to implement the proviso of section 102(d)(3) of the Na-  
10      tional Security Act of 1947 (50 U.S.C. 403(d)(3)) that the

1 Director of Central Intelligence shall be responsible for pro-  
2 tecting intelligence sources and methods from unauthorized  
3 disclosure, the Agency shall be exempted from the provisions  
4 of any law which require the publication or disclosure of the  
5 organization, functions, names, official titles, salaries, or  
6 number of personnel employed by the Agency. In furtherance  
7 of the responsibility of the Director of Central Intelligence to  
8 protect intelligence sources and methods, information in files  
9 maintained by an intelligence agency or component of the  
10 United States Government shall also be exempted from the  
11 provisions of any law which require the publication or disclo-  
12 sure, or the search or review in connection therewith, if such  
13 files have been specifically designated by the Director of  
14 Central Intelligence to be concerned with—

15           “(1) the design, function, deployment, exploita-  
16           tion, or utilization of scientific or technical systems for  
17           the collection of foreign intelligence, counterintelli-  
18           gence, or counterterrorism information;

19           “(2) special activities and foreign intelligence,  
20           counterintelligence, or counterterrorism operations;

21           “(3) investigations conducted to determine the  
22           suitability of potential foreign intelligence, counterintel-  
23           ligence, or counterterrorism sources; and



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1           “(4) intelligence and security liaison arrangements  
2           or information exchanges with foreign governments or  
3           their intelligence or security services.

4 Notwithstanding the preceding sentence, requests by United  
5 States citizens and by aliens who are lawfully admitted for  
6 permanent residence in the United States for information  
7 concerning themselves made pursuant to any provision of law  
8 shall be processed in accordance with such provision. The  
9 provisions of this section shall not be superseded except by a  
10 provision of law which is enacted after the date of enactment  
11 of the Intelligence Reform Act of 1981 and which specifically  
12 repeals or modifies the provisions of this section.”.

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